



# MEDICAL BOARD OF CALIFORNIA

## QUARTERLY BOARD MEETING

Agenda Item 3



Los Angeles Airport Hilton  
5711 W. Century Blvd.  
Los Angeles, CA 90045

**May 5-6, 2016**

### MEETING MINUTES

**Thursday May 5, 2016**

*Due to timing for invited guests to provide their presentations, the agenda items below are listed in the order they were presented.*

**Members Present:**

David Serrano Sewell, President  
Dev GnanaDev, M.D., Vice President  
Denise Pines, Secretary  
Michelle Bholat, M.D.  
Michael Bishop, M.D.  
Judge Katherine Feinstein, (ret.)  
Randy Hawkins, M.D.  
Howard Krauss, M.D.  
Kristina Lawson, J.D.  
Ronald Lewis, M.D.  
Brenda Sutton-Wills, J.D.  
David Warmoth  
Jamie Wright, J.D.  
Felix Yip, M.D.

**Members Absent:**

Sharon Levine, M.D.

**Staff Present:**

Liz Amaral, Deputy Director  
Regina Armstrong, Inspector  
Christina Delp, Chief of Enforcement  
Dianne Dobbs, Legal Counsel, Department of Consumer Affairs  
Kimberly Kirchmeyer, Executive Director  
Dino Pierini, Business Services Officer  
Anne Potter, Staff Services Manager I  
Regina Rao, Associate Government Program Analyst  
Elizabeth Rojas, Staff Services Analyst  
Jennifer Simoes, Chief of Legislation  
Lisa Toof, Administrative Assistant II  
Kerrie Webb, Legal Counsel

Curt Worden, Chief of Licensing

**Members of the Audience:**

Teresa Anderson, California Academy of Physician Assistants  
Gloria Castro, Senior Assistant Attorney General, Attorney General's Office  
Yvonne Choong, California Medical Association  
Genevieve Clavreul  
Elizabeth Costello, Investigator, Health Quality Investigation Unit  
Zennie Coughlin, Kaiser Permanente  
Julie D'Angelo Fellmeth, Center for Public Interest Law  
Louis Galiano, Videographer, Department of Consumer Affairs  
Bridgette Gramme, Center for Public Interest Law  
Marianne Hollingsworth, Consumers Union, Safe Patient Project  
Christine Lally, Deputy Director of Board and Bureau Relations, Department of Consumer Affairs  
Bernard Lim, Investigator, Health Quality Investigation Unit  
Lisa McGiffert, Consumers Union, Safe Patient Project  
Michelle Monserratt-Ramos, Consumers Union, Safe Patient Project  
Barbara Yaroslavsky, Prior Board Member  
Natalie Zellmer, Supervising Investigator I, Health Quality Investigation Unit

**Agenda Item 1          Call to Order/Roll Call**

Mr. Serrano Sewell called the meeting of the Medical Board of California (Board) to order on May 5, 2016, at 3:35 p.m. A quorum was present and due notice was provided to all interested parties.

**Agenda Item 2          Public Comments on Items not on the Agenda**

No public comments were heard.

**Agenda Item 3          Approval of Minutes from the January 22, 2016 and February 26, 2016 Meetings**

*Dr. Hawkins made a motion to approve both the January 22, 2016 and February 26, 2016 meeting minutes as written; s/Dr. Lewis. Motion carried. 10-1-3. (Absent – Bishop) (Abstain - GnanaDev, Sutton-Wills and Warmoth).*

**Agenda Item 4          President's Report**

Mr. Serrano Sewell introduced and welcomed Ms. Sutton-Wills and Mr. Warmoth to the Board. The ceremonial swearing in was administered for both Ms. Sutton-Wills and Mr. Warmoth.

Mr. Serrano Sewell announced the 2016 Legislative Day was scheduled for Wednesday, May 11, 2016. He stated the intent was for Board Members to meet with several Senate and Assembly Members to educate them on the Board's role and function. Those Members would also be asked to use their social media websites to get information regarding the Board out to their constituents.

Mr. Serrano Sewell noted that since the last Board Meeting he had had several meetings on issues related to the Board. He had a phone meeting with the Chair of the Board of Podiatric Medicine, as well as with Senator Hill. He stated he also had several calls with Board staff on issues before the Board.

Mr. Serrano Sewell referred the Members to pages BRD 4B-1 and 4B-2 in their packets, where they found an updated Committee roster. He noted that with several new Members, he and Ms. Kirchmeyer would be reaching out to the Members for new committee appointments soon. He announced that there are appointments needed for the Enforcement Committee, the Application and Special Programs Review Committee, and a public member is needed for the Special Faculty Permit Review Committee as well as for the Prescribing Task Force. He stated if any Members were interested in one of these appointments, or would like to change Committees, to let him or Ms. Kirchmeyer know.

Michelle Monserratt-Ramos, Consumer's Union Safe Patient Project, stated the ratio of public members to the physician members was only one public member to five physicians on the Board's Executive Committee, zero public members to three physician members on the Board's Enforcement Committee and only two public members to four physician members on the Board's Public Outreach, Education and Wellness Committee. She stated these ratios had gotten worse since the last Committee Roster was distributed in October 2015. She noted that it was clear that the intention of the Legislature that public members be much more heavily represented in deliberations of the Board, as the law requires that seven of the fifteen members be public members. She recommended the Board set a policy to establish a practice that all Committees of the Medical Board reflect a balance similar to what is required by the Legislature for the full Board. Ms. Monserratt-Ramos urged the Board to revisit its Committee compositions with the aim of having them reflect the nearly 50/50 physician/public member split of the Board itself.

#### **Agenda Item 5      Board Member Communications with Interested Parties**

Ms. Wright stated she attended the 35<sup>th</sup> annual gala for Delta Sigma Theta and had met the new Dean of Charles Drew Medical University. She had a discussion regarding the Board, public outreach and their path of growth for the University.

Dr. Krauss stated he had been an invited speaker at the Annual Federation of State Medical Boards (FSMB) meeting that was held in San Diego, April 27-30, 2016. He stated he spoke on physician recommendations for marijuana and physician use of marijuana.

Dr. GnanaDev stated he also attended the FSMB meeting and welcomed the FSMB and its attendees to California, who was the host of this year's annual meeting. He also noted that he is an active member of the California Medical Association (CMA) and is involved in various activities, but keeps the Board business separate from CMA's business.

#### **Agenda Item 6      Discussion and Possible Action on 2017 Proposed Board Meeting Dates**

Ms. Kirchmeyer referred the Members to page BRD 6-1 in their packets that contained the proposed 2017 meeting dates and locations. Ms. Kirchmeyer stated these dates would allow the

appropriate amount of time between meetings and would also work with other meetings that are scheduled throughout the year, such as the 2017 Annual FSMB meeting.

***Ms. Wright made a motion to approve the 2017 proposed meeting dates and locations as submitted in the Board packet; s/Dr. Lewis. Motion carried, 13-0. (Bishop absent).***

## **Agenda Item 7          Executive Management Reports**

Ms. Kirchmeyer stated she would not be going over the reports in detail unless Members had any questions, but would bring a few items to their attention. She referred the Members to pages BRD 7A-4, that showed the Board's fund condition. Ms. Kirchmeyer noted that, at this time, the Board's fund reserve was projected to be at 3.8 months at the end of the current fiscal year and below the mandate in fiscal year 17/18. She then noted that the Board's Budget Change Proposals (BCP) to hire additional staff in the Central Complaint Unit (CCU) and to increase the Board's expert reviewer funding were approved by both the Senate and Assembly Budget Committees. Once the budget bill makes it out of both of those Committees and the Governor signs it, one additional staff will be hired in the Enforcement Unit. Ms. Kirchmeyer noted that as stated at the last meeting, the other two additional BCPs going through the process is the augmentation for the Attorney General's (AG) office due to Senate Bill (SB) 467 and the change due to the transition of the Registered Dispensing Opticians Program to the Board of Optometry.

Ms. Kirchmeyer noted that the Board continues to monitor the CURES registration process and notify physicians that they must be registered by July 1, 2016. The Board had placed information on the website including tutorials, frequently asked questions, and helpful tips. She noted the Board had recently been asked to assist in sending out a survey to physicians to get feedback on how the CURES 2.0 system was working for them, as well as what type of problems they may be experiencing. She stated the survey should go out in the fall, and that it is part of the study on opioids via a grant given to the California Department of Public Health (CDPH). The Department of Justice (DOJ) was also awarded a grant to study the issues with opioid use, including the use of CURES. She noted the DOJ wants to use the survey information to determine if changes are needed to the system.

Ms. Kirchmeyer then referred the Members to page BRD 7E-1. She stated that with the elimination of the Board Members from the Health Professions Education Foundation (Foundation), Ms. Kirchmeyer asked the executive director of the Foundation to provide a written report for the Boards update. This will ensure the Board stays informed about the activities of the Foundation.

Ms. Kirchmeyer stated that in regard to the issue of overprescribing of psychotropic medication to foster children, the Members can find a written update on page BRD 7A-3. She noted that the Board recently had an exit interview with the Bureau of State Audits (BSA) regarding its audit on this issue. She noted that while the audit focused on the Department of Health Care Services, the Department of Social Services, and the counties, a portion of it also reviewed the Board and the work the Board is doing on the issue. She stated the BSA report is scheduled to be released sometime in the Summer. There is also a bill related to this issue that Ms. Simoes will be discussing during the legislative agenda item.

Ms. Kirchmeyer noted that staff has been meeting with the Business, Consumer Services, and Housing Agency, who is taking the lead on ensuring the End of Life Option Act is fully implemented by June 9, 2016, when the law takes effect. The Board has developed a webpage specifically on this issue that will be released upon approval of CDPH's website. She noted the Board had met with some experts in this area and there would be a presentation on this issue at the Board's July meeting.

Ms. Kirchmeyer then gave an update on the opioid misuse and overdose prevention workgroup led by the CDPH. She noted the Board had been a part of this workgroup for almost two years and while a lot of collaboration had been done by this workgroup, the workgroup had now identified some priorities and are developing different taskforces that would be working in different areas on this issue. Ms. Kirchmeyer noted she is excited about the work that is going to be put into these task forces. She stated she would bring task force updates to the Board, once they have met.

Ms. Kirchmeyer ended her report by reminding all Members to turn in their travel expense claims as soon as possible as the end of the fiscal year was approaching and the cutoff date for submission is June 1, 2016.

Yvonne Choong, California Medical Association, raised an issue with regard to the Enforcement Program summary. She stated in the expert reviewer program part of the report, it was stated the Board was seeking expert reviewers in a variety of expert areas. Ms. Choong noted the CMA would like to urge the Board to consider allowing osteopathic physicians to serve as expert reviewers when appropriate in specialties where recruitment has been an issue. She asked Board staff to discuss this with legal counsel to see if it would impact the Board's enforcement cases.

### **Agenda Item 8      Update on the Federation of State Medical Boards**

Ms. Kirchmeyer stated the FSMB annual meeting took place in San Diego on April 28-30, 2016. She noted that on BRD 8-1, Members would find the agenda for that meeting. She noted there were several great speakers, including Dr. Krauss, who spoke on legal and legislative challenges of changing the medical marijuana landscape. Ms. Kirchmeyer stated she was quite impressed with the opening presentation by the United States Surgeon General. Though the focus of his presentation had been on overprescribing of opioids, he also discussed stress and physician burnout. Dr. Murthy talked about what was being done at the federal level on both of these issues. Ms. Kirchmeyer stated there were several different educational sessions. She sees the physician burnout issue as being one of the leading issues at the FSMB within the next year. She stated the FSMB would also be taking a look at physician compounding among other topics.

Ms. Kirchmeyer noted that Dr. GnanaDev, Dr. Lewis, Ms. Delp and Mr. Worden also attended the meeting. She then asked the Members who attended if they had any additional comments about the meeting.

Dr. GnanaDev began by thanking Ms. Kirchmeyer for writing his opening speech for him, which included the top 10 odd laws in California. He stated the meeting started and ended on a great note.

Dr. Krauss stated this was only his second time attending the FSMB meeting, and feels it was a great opportunity to meet medical board colleagues from all over the country and to discuss how each state was facing identical circumstances in many cases and to look at different solutions. He then encouraged the other Members to look at next year's FSMB meeting dates and try to make the time to attend.

Dr. Krauss then noted that Ms. Kirchmeyer was sought after for her opinions and is very well respected, which made him proud to be a member of the Board.

Dr. Lewis noted that the highlight of the FSMB meeting for him was the networking with the western region boards. Ms. Kirchmeyer presented the highlights of what the Board was doing and stated that approximately 50% of the questions asked were directed to Ms. Kirchmeyer for response and for her opinion on different issues happening in the different states. This also made him proud to have our Board's Executive Director's opinion sought out in that meeting.

#### **Agenda Item 9      Update, Presentation, and Possible Action on the Sunset Review Process/New Sunset Issues**

Ms. Kirchmeyer began by explaining that the sunset review process is overseen jointly by the Senate Business, Professions, and Economic Development Committee and the Assembly Business and Professions Committee. The process is usually initiated in the spring two years prior to the sunset date set in statute. She noted the sunset review process begins by the Committees sending out a questionnaire to the Board requesting completion by the following November or December. The questionnaire requests information on a wide variety of issues, including, but not limited to Board Members, legislation, regulations, major studies, performance measures, customer satisfaction surveys, budget and staffing information, licensing and enforcement program information, public information policies, unlicensed activity, and workforce development and job creation. Ms. Kirchmeyer stated the questionnaire also discusses current issues, which could include the implementation of the Uniform Standards, the Consumer Protection Enforcement Initiative regulations, BreZE, and any other issues the Committees would like the Board to address. Ms. Kirchmeyer then stated that the next section of the questionnaire covers issues that had been brought up under the Board's prior sunset review and what action the Board took to address the issues that were raised. Lastly, the questionnaire asks for any new issues that have been raised to or by the Board and any recommended solutions to these issues where the Committees may be of assistance. She added this is also the section where the Board would address any issues that had been raised in a prior sunset review process that had not been addressed.

Ms. Kirchmeyer continued by noting that the Board's last sunset review report was completed in 2012 and the hearing was held in 2013. She noted the background paper that was provided to the Board contained 39 issues where the Board had to provide responses, however, she said it is important to note that 20 of the issues were issues identified by the Board in its sunset review report. Ms. Kirchmeyer added that these 39 issues can be found in pages BRD 9-21 through BRD 9-27 of the board packet. She noted these pages provide a listing of the 39 issues for the Board during the last sunset review process. She added almost all of the issues had been addressed and completed, with the exception of issue number 4. She stated those that are pending are those that need additional discussion with the Committees to determine if they are still warranted or if further action is needed. She added Board staff would be working with Committee staff to determine how to proceed on these matters.

Ms. Kirchmeyer then moved on to the part of the sunset review process where the Board would be bringing up new issues that had been raised to or by the Board and any recommended solutions to these

issues where the Committees may be of assistance. She noted that board staff had identified several issues that should be placed in this section of the report. In addition, a few issues had been raised at Board meetings by Board Members. Ms. Kirchmeyer requested the Members review each of these issues to determine if Board staff should include the issues in the sunset review report. The issues that have been identified are as follows:

- **Expiration date of licenses:** Ms. Kirchmeyer stated that currently, a physician pays a full licensure fee at the time of application or when they have been notified that their application is complete and is ready for licensure. She said the Board's laws state that the expiration of a license is determined by the birth month of the physician. Depending upon when the applicant's licensure file is complete, the physician could be paying a full licensure fee for 13-23 months, instead of the full 24 months (or two years). Ms. Kirchmeyer noted legislation had been proposed, but not passed, that would require proration of the Board's licensure fees. However, in order to prorate, the Board would have to change several business processes and the BreEZe system. In addition, she added, proration would result in additional time for licensure based upon these business process changes. Therefore, staff would be requesting that the expiration date be two years from the month of issuance instead of the birth month. She stated the Board supported this legislative change previously, but the provision of the bill related to the Board was removed from the bill.
- **Postgraduate Training Requirements:** Ms. Kirchmeyer stated the Board had requested discussion on the issue of increasing the years required for postgraduate training from one or two years (U.S./Canadian applicant or International Medical Graduate applicant) to two or three years. She noted there had been extensive discussion by the Board and an interested parties meeting regarding this issue.
- **Data Collection for Outpatient Surgery Settings (OSS):** Ms. Kirchmeyer stated that in 2015, the Board sought legislation that would require OSSs to provide certain data to the Board. Currently, any OSS that is licensed by the CDPH is required to report aggregate utilization and patient encounter data to the Office of Statewide Health, Planning and Development (OSHPD). She noted, however, most OSSs are required to be accredited instead of licensed, and there is no requirement to for them report data to OSHPD. Ms. Kirchmeyer stated this had resulted in a serious deficiency of OSS data for accredited OSSs. She added the requirements for reporting were originally placed into Senate Bill (SB) 396 (Hill, 2015), however, due to opposition and the need for further discussion, the requirements were removed, and the Board agreed to work with interested parties to determine what specific information was actually needed for the Board and for trend analysis. She announced the Board had an interested parties meeting scheduled for May 26, 2016, to discuss this issue.
- **Amendments to Adverse Event Reporting for OSSs:** Ms. Kirchmeyer stated that SB 304 (Lieu, 2013) required OSSs to report certain adverse events to the Board. The events required to be reported are those included in Health and Safety Code section 1279.1, which are the same requirements for a hospital to report. She noted that OSSs are different from hospitals and the reporting requirements should be tailored to an OSS and not a hospital.
- **Posting of Information Related to a Probationary License:** Ms. Kirchmeyer stated that currently when a physician is on probation, all related discipline documents are available on the Board's website for as long as those documents are public. However, if the Board issues a probationary license to an applicant (Business and Professions Code section 2221), it is not

specified in law how long that information should be made available to the public. She noted this information should follow the law related to physicians placed on probation, and the documents related to probationary licenses should be posted on the Board's website as long as they are public.

- **Reporting Penalties for 805.01:** Ms. Kirchmeyer stated that SB 700 (Negrete McLeod, 2010) required entities to report peer review findings to the Board after a final decision recommendation but prior to the action being taken. She added the required reporting is only to be reported if certain findings are made – incompetence or gross or repeated deviation from the standard of care involving death or serious bodily injury, self-prescribing controlled substances, the use of any dangerous drug or alcohol to the extent or in such a manner as to be dangerous to the licensee or another person, repeated acts of clearly excessive prescribing, and sexual misconduct with a patient during the course of treatment or examination. She stated this “805.01 report” should be received prior to the filing of an “805 report.” Ms. Kirchmeyer added the statistics over the past several years, since the bill was implemented, indicated that entities were not providing these reports. She noted that in fiscal year (FY) 11/12 to FY 14/15 the number of 805.01 reports received by the Board was 16, 9, 2, and 4, respectively. During that same timeframe, the Board received on average 104 805 reports each year. She stated the Board believes entities are not submitting 805.01 reports as required. She noted one issue that could be a factor in not reporting is that there is no penalty for failing to report pursuant to section 805.01. However, if an entity fails to file an 805 report, they could receive a fine of up to \$50,000 per violation for failing to submit the report to the Board or \$100,000 per violation if it is determined that the failure to report was willful.
- **Enforcement Program Clean Up:** Ms. Kirchmeyer noted there are a few legislative changes that would improve the enforcement process including, strengthening Business and Professions Code section 2334 regarding the exchange of expert witness information, which was in the prior sunset review report; strengthening the subpoena enforcement process; and amending Government Code section 11529(f) to add in petitions to revoke probation.
- **Licensing Program Clean Up:** Ms. Kirchmeyer stated Business and Professions Code section 2420 governs provisions for license renewal of several license types under the jurisdiction of the Board. However, with the movement of the Registered Dispensing Optician Program and other allied health professions that used to be under the jurisdiction of the Board, amendments need to be made for consistency.
- **Health Professions Education Foundation (HPEF) Membership:** Ms. Kirchmeyer noted that up until January 1, 2016, the Board was required to appoint two standing Board Members to the HPEF. The HPEF improves access to healthcare in underserved areas of California by providing scholarships, loan repayments, and programs to health professional students and graduates who are dedicated to providing direct patient care in those areas. She noted in return for this support, individuals agreed to provide direct patient care in an underserved area of California for three years. On January 1, 2016, the Board's participation on HPEF ended. She stated as the HPEF oversees the awarding of loan repayments from the Stephen M. Thompson Loan Repayment Program, the Board should remain involved and should have members on the HPEF.
- **Specialty Board Approval:** Lastly, Ms. Kirchmeyer noted that Business and Professions Code section 651(h) prohibits physicians from advertising they are "board certified" or "board

eligible" unless they are certified by any of the following: 1) An American Board of Medical Specialties (ABMS) approved specialty board; 2) A board that has specialty training that is approved by the Accreditation Council for Graduate Medical Education (ACGME); or 3) A board that has met requirements equivalent to ABMS and has been approved by the Board. She added that the law asks the Board to essentially perform most of the same tasks as the ABMS, the ACGME, and the specialty boards and their residency review committees – with a fraction of their resources. So, for an ABMS specialty board to become recognized, it takes years and involves developing model training standards for the specialty, establishing residency training programs at medical schools and medical facilities, operating training programs and obtaining accreditation, undergoing regular oversight by residency review committees, etc. All of the individuals within this system are experts in medical training and the specialty. In addition, since the program's inception, the Board had only denied two specialty boards. The first specialty board filed four suits against the Board, including one in Federal Court. The second specialty board applied for approval twice, was denied both times, and filed suit on the second denial. Ms. Kirchmeyer stated the Board and the law had prevailed in all litigation, but the cost was considerable. This statute should be amended to strike the option of seeking recognition as a specialty board by the Board, while continuing to recognize the four specialty boards already approved by the Board.

Ms. Kirchmeyer then recommended Board Members determine if any additional issues should be brought forward in the report.

Dr. Lewis asked if while staff was meeting with Legislators over the years, were they getting a sense of issues that might come up, or might be hot issues that perhaps staff could begin working on ahead of getting the questions.

Ms. Kirchmeyer stated she believes the Enforcement timelines will be an issue for the Board, along with the Vertical Enforcement model. She feels that there will be specific questions with regard to both of those.

Dr. GnanaDev asked Ms. Kirchmeyer if she had heard anything about whether the Interstate Licensure Compact may be brought into the sunset review.

Ms. Kirchmeyer stated she had not heard anything as of yet, but it could come up since there are now 23 states that have either adopted the Interstate Licensure Compact or are in the process of adopting it. She felt that as more and more states adopt it, there would be a push by some interested parties for California to adopt it, as well.

Dr. Hawkins asked if the Board really wanted to add certain issues as new issues and whether that brings undue attention to the Board.

Ms. Kirchmeyer stated that when staff looked at these new issues, they were determined to be important to the Board and to consumer protection and this is the perfect time to get legislative changes made, if needed.

Mr. Serrano Sewell felt the language on the signs in physician's offices should be added to the new issues list. He stated the new language should refer consumer questions to either a phone number or website and be a neutral, factual statement.

***Dr. Lewis made a motion to approve the new issues shown in the packet and also to include the issue of the new language for the sign posted in offices; s/Ms. Wright.***

Lisa McGiffert, Consumers Union Safe Patient Project, welcomed the new Members. She stated there were a few things that they would like to see added to the sunset review report. She stated they support the Board's plan to get OSSs that are owned by physicians to report to OSHPD, regarding information about the procedures they are doing. She noted the adverse events that occur in OSSs, should be posted on the Board's website, and if there is legislative approval to do this, then it should be added to the sunset review report. She stated the accreditors are now required to look into the background of the ownership interest to see if they have had accreditation issues in the past. Consumer's Union believes they should also be required to look into the physician owner's background, as well. Ms. McGiffert noted Consumers Union would like to see the signs posted in physician offices be updated and changed with more information for the consumers. She added there are also some issues with the Board's statute of limitations, stating it is a confusing law and consumers do not know when the time limits are for filing a complaint. Lastly, she noted they appreciate the Board's opinions on the 805.01 reports.

***Motion carried unanimously.***

**Agenda Item 10      Update from the Department of Consumer Affairs, which may include Updates pertaining to the Department's Administrative Services, Human Resources, Enforcement, Information Technology, Communications and Outreach, as well as Legislative, Regulatory and Policy Matters**

Ms. Lally welcomed the new Members, thanked them for their service and stated she and Director Kidane are looking forward to working with them.

Ms. Lally announced that after eight years of service with the Department of Consumer Affairs (DCA), Tracy Rhine, Chief Deputy Director, had accepted a new job and was leaving the DCA.

Ms. Lally stated the DCA was in the process of developing a new training specifically for new executive officers (EO) and growing the next generation of EOs. The DCA would be sending out a survey to all current EOs, as well as Board Members, to assess current training needs for these EOs and hoped that everyone would participate in that survey.

Ms. Lally noted the DCA's SOLID team would start facilitating "brown bag" gatherings for their EOs to develop networking and training opportunities for the DCA's EOs.

Ms. Lally then discussed SB 1195 (Hill), stating this bill was amended on April 6, 2016, to include a number of provisions that address the anti-trust issues presented by the (*North Carolina Board of Dental Examiners (NCBDE) vs. the Federal Trade Commission (FTC)*) U.S. Supreme Court decision that came out last February. One of the most significant amendments that would affect the DCA boards, is that it grants the DCA Director expanded authority over regulations to ensure they are not anti-competitive. Currently, the DCA Director can only disapprove regulations that could injure the health, safety, and welfare of the public. Ms. Lally stated if the EO or any Members have any questions about this bill or any other legislation, DCA has a legislative Director, Ms. Melinda McClain, who is always available to assist.

Next, Ms. Lally provided an update on the BreEZe system. She noted the Board is continuing to see a substantial amount of applications submitted online. She stated that at the end of March, the Board received approximately 8500 applications online, which represents about 63% of the total application volume for that period. She noted that renewals make up the vast majority of online applications received. There were approximately 7700 renewals received at the end of March, and 99% of them were approved the same day.

Ms. Lally stated that of the 18 programs on BreEZe they are approaching a milestone of about 200 million dollars processed via the online BreEZe portal, which makes up over half of the money processed in BreEZe.

Ms. Lally noted that DCA had launched the 2<sup>nd</sup> release of BreEZe in January 2016. This release included seven boards and one bureau to the BreEZe system, which now makes 18 programs of the DCA's 40 on the system. Since January, DCA and the BreEZe vendor had dramatically increased the number of system changes that are regularly deployed through maintenance updates. She stated the maintenance updates occur every 6-7 weeks, with the next update scheduled for June 2016, which would include approximately 250 changes.

Ms. Lally stated that specific to the Board, since January of this year, the Board had put forward and enacted 57 changes and/or enhancements. As of the end of April, the Board had a total of 159 outstanding defects and/or enhancements pending for the BreEZe system. She noted that some of these requests are older requests and DCA's IT and the Board's executive director are reviewing those requests to prioritize those that are still necessary.

Ms. Lally then announced a new pilot program that DCA and the Board are working on together to develop. It is a reporting tool that would eventually be used by all DCA boards and bureaus. This reporting tool has been named the Quality Business Intelligence Reporting Tool aka QBIRT. This tool would be linked to all of the data that is in the BreEZe system, and its objective is to provide Board staff greater flexibility to build and modify data reports as it puts the data directly in the hands of Board staff. Currently, DCA has received positive feedback from the four programs in the pilot program. She thanked the Board staff for the valuable feedback and input on key areas that they provided to enhance the tool's effectiveness. Ms. Lally stated this tool is scheduled for department wide rollout in fall of this year.

Lastly, Ms. Lally noted DCA and the Board are also working together to enhance the BreEZe verify a license main page by making the page more user friendly. They are currently developing surveys and focus groups to get feedback on how to help enhance the webpage. The surveys will go out late summer and the DCA will work with the Board's executive director to gather the appropriate stakeholders to be included in the focus groups.

Ms. Lally ended by thanking the Board's staff and executive director for always making themselves available when DCA needs some assistance with IT matters. She stated their assistance is very much appreciated.

Dr. GnanaDev thanked Ms. Lally for her report and agreed that BreEZe is getting better on the licensing functions, but requested that the same efforts be put toward the enforcement functions.

Dr. Yip agreed with Dr. GnanaDev and stated that hopefully the new QBIRT tool will assist in the enforcement data being extracted for reports.

**Agenda Item 11      Update, Discussion and Possible Action on Recommendations from the Public Outreach, Education and Wellness Committee**

Dr. Lewis stated the first agenda item discussed at the Committee meeting was an update on the public outreach plan. After the Committee meeting in January, he had the opportunity to work with staff to set due dates and priorities for all of the outreach activities.

Dr. Lewis noted that staff had already completed some of the activities in the outreach plan. One of those completed activities included a message encouraging state employees, vendors and contractors to check up on their physicians' licenses, which will appear on all warrants issued by the State Controller's Office during the period of June 1 through June 30, 2016. Dr. Lewis stated the message will reach approximately 440,000 individuals. In addition, an article with information about the Board and a link to the Board's website was included in the California State Teachers Retirement System (CalSTRS) and the California State Retiree's Organization's (CalSRO) April newsletter and will again be in its spring and summer 2016 newsletters. He stated the target number of these groups is 934,000 individuals.

Dr. Lewis noted that Board staff had reached out to a number of other organizations, such as city and county entities, unions, AARP and others. He stated staff was working on a website tutorial on how to look up a physician, which should be completed by the next Board meeting in July 2016. He stated staff was also working on Public Service Announcements (PSA) that could be provided to various media organizations and other interested parties, which should be completed by September 2016.

Dr. Lewis said the staff had also updated the Committee on the status of the Public Affairs' strategic plan activities. He announced that the Committee had discussions on possible enhancements to the Board's website after reviewing the Consumer Reports' survey on the ranking of the medical and osteopathic boards that was done in 2015. Dr. Lewis noted that the Committee heard recommendations from staff and others that will be put into place.

Mr. Serrano Sewell thanked Dr. Lewis and staff for getting so much done in a short amount of time and stated there is always more work to do, but that this effort is off to a very good and positive start.

**Agenda Item 12      Update on the Physician Assistant Board**

Dr. Bishop stated the last Physician Assistant Board (PAB) Meeting was in April 2016. At that meeting, they introduced a new Member, Miriam Valencia, J.D. to the PAB. Ms. Valencia replaced Ms. Gomez-Vidal. Ms. Valencia is the Regional Government Affairs Manager for Out Front Media, formerly CBS Outdoor. Dr. Bishop stated Ms. Valencia is a member of the Valley Industry and Commerce Association, Los Angeles County Business Federation and Los Angeles World Affairs Council. Ms. Valencia's term expires January 1, 2019, and she was warmly welcomed to the PAB.

Dr. Bishop then noted the Senate Committee on Business Professions and Economic Development and Assembly Committee on Business and Professions completed their sunset

oversight review of the PAB on March 9, 2016. He stated in preparation of the oversight hearing, staff of the Committees developed a background paper that summarized the contents of the Board's sunset report. The paper also reviewed the PAB's prior sunset report to see if they had implemented prior Committee recommendations. He noted that the paper also addressed current sunset issues. Committee staff identified 10 issues for the PAB. He stated that out of those 10 issues, Committee staff identified four issues which were discussed by the PAB's president, vice president and executive officer at the hearing. Dr. Bishop stated it was noted by Committee staff that since its last review, the PAB has shown a commitment to improve its overall efficiency and effectiveness and has worked cooperatively with the Legislature and Committees to bring about necessary changes. He noted it was recommended by the Legislature that the PAB continue to regulate physician assistants. He stated AB 2193 had been introduced, which would extend the Sunset date for the Board for four years.

Dr. Bishop then stated PAB staff is working with the BreEZe team to update the online version of the physician assistant application. He noted that with this update, applicants will no longer be required to send in a paper application when they apply online. This change will take place in May. Currently online applicants must also submit a complete hard copy of their application, so this change will make applying more efficient and user friendly and allow the Board to more quickly process applications. He stated the PAB is also working on a BreEZe system change that would allow licensees to change their addresses online. This change will take place in June 2016. He noted this enhancement would make it more convenient for licensees to update their addresses with the PAB, however, licensees would still have the option to request address changes in writing or via the website.

Dr. Bishop moved on to four regulations he felt needed to be brought to the MBC's attention. The first being a regulatory proposal for the PAB's disciplinary guidelines to include the uniform standards for substance abusing health care licensees, which were approved by the Office of Administrative Law (OAL) on April 11, 2016. He stated this regulation would be effective on July 1, 2016.

Dr. Bishop stated the next regulation, which was discussed at the PAB's last meeting raised questions about the current criminal conviction disclosure requirements. He noted that members raised concerns about whether the \$300.00 trigger for reporting infractions was too low and whether the PAB might be receiving too many disclosures for convictions, such as minor traffic violations, unrelated to the practice of physician assistants. He said the PAB voted to request the staff bring language to the next PAB meeting showing the proposed changes discussed at the meeting for possible initiation of a rulemaking file to amend current regulations.

Dr. Bishop noted the third regulation was in regard to the PAB's requirements for the Physician Assistant Specialty programs. The PAB voted to create a sub-committee to look at physician assistant specialty programs and consider applications for approval.

Lastly, Dr. Bishop stated the PAB discussed the widespread practice of the use of electronic signatures in patient records and other documents utilized in the medical environment. He noted it was recognized that electronic signatures allow for the more efficient use by the medical practitioners, thus improving patient care. He said the PAB voted to request staff to bring language to the next PAB meeting showing proposed changes that would include the use of electronic signatures and the delegations of a service agreement for possible initiation of the rulemaking process to amend current regulations.

Dr. Bishop ended his report by thanking the executive director and staff for their continued assistance and support of the PAB.

Mr. Serrano Sewell then presented Ms. Yaroslavsky with a resolution from Senator Allen and a plaque from the Board in honor of her 13 years of dedicated service to the Board from 2003 to 2016. He stated that Ms. Yaroslavsky had served and led virtually every standing committee of the Board. He stated that beyond the service to the Board, the 13 years represent her focused commitment to the Board's mandate, which is consumer protection. Mr. Serrano Sewell noted that the Board has come a long way in the past 13 years, and much of that was due to the dedicated service and leadership of Ms. Yaroslavsky.

Several additional Members thanked Ms. Yaroslavsky for her leadership, humanity, compassion and passion she has shown through her 13 years of service on the Board and stated she will be missed both on a professional level as well as a personal level.

Ms. Yaroslavsky thanked each of the Board Members for being part of the community and wished them all the best. She stated she is always available to assist in any way and encouraged the Members to take this job seriously, as what they do is very important, not just for them, but for the people they will never see, and the voices they will never hear. She stated they are making a difference in the quality of life of everyone who lives in the State of California.

Several comments from the public were received thanking Ms. Yaroslavsky for her dedication and service.

**Mr. Serrano Sewell adjourned the meeting at 5:40 p.m.**

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## **Friday, May 6, 2016**

### **Members Present:**

David Serrano Sewell, President  
Dev GnanaDev, M.D., Vice President  
Denise Pines, Secretary  
Michelle Bholat, M.D.  
Michael Bishop, M.D.  
Judge Katherine Feinstein, (ret.)  
Randy Hawkins, M.D.  
Howard Krauss, M.D.  
Kristina Lawson, J.D.  
Sharon Levine, M.D.  
Ronald Lewis, M.D.  
Brenda Sutton-Wills, J.D.  
David Warmoth  
Jamie Wright, J.D.  
Felix Yip, M.D.

### **Staff Present:**

Liz Amaral, Deputy Director

Regina Armstrong, Inspector  
Christina Delp, Chief of Enforcement  
Dianne Dobbs, Legal Counsel, Department of Consumer Affairs  
Kimberly Kirchmeyer, Executive Director  
Dino Pierini, Business Services Officer  
Anne Potter, Staff Services Manager I  
Regina Rao, Associate Government Program Analyst  
Elizabeth Rojas, Staff Services Analyst  
Jennifer Simoes, Chief of Legislation  
Lisa Toof, Administrative Assistant II  
Kerrie Webb, Legal Counsel  
Curt Worden, Chief of Licensing

**Members of the Audience:**

Sejad Afahan, Midwestern University  
Teresa Anderson, California Academy of Physician Assistants  
Carmen Balber, Consumer Watchdog  
Claudia Brigalia, Licensed Midwife  
Ricardo Castillo, Attorney General's Office  
Gloria Castro, Senior Assistant Attorney General, Attorney General's Office  
Yvonne Choong, California Medical Association  
David Chriss, Chief, Health Quality Investigation Unit  
Zennie Coughlin, Kaiser Permanente  
Julie D'Angelo Fellmeth, Center for Public Interest Law  
Christopher Figueroa, Investigator, Health Quality Investigation Unit  
Louis Galiano, Videographer, Department of Consumer Affairs  
Cristina Gejmundo, Midwestern University  
Jon Genens, Investigator, Health Quality Investigation Unit  
Bridgette Gramme, Center for Public Interest Law  
Ed Hollingsworth  
Marianne Hollingsworth, Consumers Union, Safe Patient Project  
Lisa McGiffert, Consumer' Union, Safe Patient Project  
Christine Lally, Deputy Director of Board and Bureau Relations, Department of Consumer Affairs  
Michelle Monserratt-Ramos, Consumers Union, Safe Patient Project  
Kathleen Nicholls, Deputy Chief, Health Quality Investigation Unit  
Phuong Pham, Midwestern University  
Robert Pulido, Supervising Investigator II, Health Quality Investigation Unit  
Randy Schuntz, Midwestern University  
Michael Schwartz, Ventura County District Attorney  
Carrie Sparrevohn, Licensed Midwife, Midwifery Advisory Counsel  
Tracy Tu, Investigator, Health Quality Investigation Unit

**Agenda Item 13      Call to Order/Roll Call**

Mr. Serrano Sewell called the meeting of the Medical Board of California (Board) to order on May 6 2016 at 9:04 a.m. A quorum was present and due notice was provided to all interested parties.

**Agenda Item 14      Public Comments on Items not on the Agenda**

No public comments were heard.

**Agenda Item 15      Discussion and Possible Action on Legislation/Regulations**

Ms. Simoes referred the Members to their Legislative Packet and stated they should have received an updated tracker list and one updated bill analysis. She noted that the bills in blue are either 2-year bills or the Board had already taken positions on them, so they will not be discussed. She noted the bills in pink are the Board sponsored bills, so those would be discussed first. She then stated the bills in green will require discussion and a position. She made note that the bill that Ms. Lally had mentioned, SB 1195 (Hill), had been introduced and addressed the FTC issue. This bill would grant authority to the Director of DCA to review a decision or other action of a board within DCA to determine whether it unreasonably restrains trade and to approve, disapprove, or modify the board decision or action, as specified. It would also add an additional standard for the Office of Administrative Law to follow when reviewing regulatory actions of state boards. She stated the Board does not need to take a position on this bill, but there is a copy of the bill in the legislative packet for review.

Ms. Simoes then noted the next Legislative Day was scheduled for May 11, 2016, and staff had set up meetings with 15 Legislators. She will bring an update back at the next Board meeting.

**AB 2745 (Hill)** Ms. Simoes began with the Board's sponsored clean-up bill, AB 2745 (Hill). She noted this bill passed out of Assembly Business & Professions Committee with no "no" votes and passed out of the Assembly on consent.

**SB 1039 (Hill )** Ms. Simoes stated the Board of Podiatric Medicine (BPM) is its own board and is completely separate from this Board. She noted that for more than the past two decades, the BPM has been issuing its own podiatric licenses, separate and apart from the Board. She said it came to the Board's attention that statute does not reflect this practice in all sections of the Business and Professions Code (BPC) and there are some conflicting provisions. She stated this bill will remove references to the Board in the BPC sections that regulate the BPM. The bill will make it clear that the BPM is its own board that performs its own licensing functions.

Ms. Simoes stated the Board voted to sponsor legislation to make the technical, clarifying changes included in this bill. Board staff discussed these changes with the staff of the Senate Business, Professions and Economic Development Committee (B&P) and they agreed that the changes needed to be made and this language was amended into this clean-up bill authored by Senator Hill. Ms. Simoes stated this bill had passed Senate B&P and was in Senate Appropriations.

**SB 1478 (Sen. B&P)** Ms. Simoes noted the bill was the health omnibus bill. The provisions pertaining to the Board deleted some outdated sections of law that are related to the Board. This bill passed Assembly B&P and was in Senate Appropriations.

**SB 1033 (Hill)** Ms. Simoes noted this is the bill that requires the Board, the Osteopathic Medical Board of California, the Board of Podiatric Medicine, the California Acupuncture Board, the Board of Chiropractic Examiners, and the Naturopathic Medicine Committee, by July 1, 2018, to include a standardized, single paragraph, plain-language summary that contains the listing of causes that led to the licensees' probation, the length of the probation and the end date, and all practice restrictions placed

on the license on any Board documents informing the public of probation orders and probationary licenses, including, but not limited to, the Board's Newsletter. She added this summary information is also required to be posted on the BreEZe licensee profile for each licensee subject to probation.

Ms. Simoes stated this bill requires physicians and licensees of the other named boards, to disclose their probationary status to patients, or their guardians or health care surrogates, prior to the patient's first visit while the licensee is on probation, if the licensee was placed on probation for any of the following:

- Gross negligence;
- Repeated negligent acts involving a departure from the standard of care with multiple patients;
- Repeated acts of inappropriate and excessive prescribing of controlled substances, including, but not limited to, prescribing controlled substances without an appropriate prior examination or without medical reason documented in the medical records;
- Drug or alcohol abuse that threatens to impair a licensee's ability to practice medicine safely, including practicing under the influence of drugs or alcohol;
- Felony conviction arising from or occurring during patient care or treatment; and
- Mental illness or other cognitive impairment that impedes a licensee's ability to safely practice.

Ms. Simoes noted these licensees, including physicians, would also be required to disclose their probationary status to patients if their licensing board ordered any of the following in conjunction with placing the licensee on probation:

- That a third party chaperone be present when the licensee examines patients as a result of sexual misconduct;
- That the licensee submit to drug testing as a result of drug or alcohol abuse;
- That the licensee have a monitor; or
- Restricting the licensee totally or partially from prescribing controlled substances.

Ms. Simoes added licensees would also be required to notify patients that they are on probation if they have not successfully completed a clinical training program or any exams required by the Board as a condition of probation, or if they have been on probation repeatedly.

She noted this bill would require the licensee, including physicians, to obtain from each patient a signed receipt following the disclosure that includes a written explanation of how the patient can find further information on the licensee's probation on the Board's website.

Ms. Simoes added the bill does provide an exemption if the patient is unconscious or otherwise unable to comprehend the disclosure and sign the receipt and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the receipt. In these instances, the licensee would be required to disclose his or her probationary status as soon as either the patient can comprehend the disclosure and sign the receipt or a guardian or health care surrogate is available to comprehend the disclosure and sign the receipt.

Ms. Simoes then went over the fiscal impact of this bill. Staff believes that this bill will likely result in more cases going to hearing because physicians will not want to agree to probation if they have to notify their patients. She stated that Board staff is estimating that cases that result in stipulated settlements of three years of probation or less will go to hearing instead of settling. Based on that, the Board's additional cost would likely be \$1 million dollars. She noted that one amendment that is being discussed to help cover this fiscal impact is to allow cost recovery for physicians on probation, which would mean that if the Board puts a physician on probation, prosecution costs could be recovered from the physician. She noted that currently, cost recovery is not an option.

Ms. Simoes continued by saying the probationary status of a physician is public information and available on the Board's website, and that ensuring that patients are informed promotes the Board's mission of consumer protection. However, in emergency situations it may not be prudent for physicians to provide this notification, as the circumstance may not allow a patient the opportunity to make an informed decision. There are also instances in which a patient will not know who their physician will be prior to seeing that physician, including being assigned an anesthesiologist for a surgical procedure or being assigned an OB/GYN who is on call for labor and delivery. She stated that, again, in these situations, the patient may not have the opportunity to make an informed decision.

In addition, Ms. Simoes stated that all health care consumers should have the same right to make an informed decision. It should not be dependent upon what type of health care practitioner is serving them. Therefore, all healing arts boards and licensees should be held to the same notification requirements.

Dr. Krauss stated he has several concerns. The first being the burden that will be placed on the Board; not just in terms of increased cost, but in terms of being overwhelmed and having the capacity to work through all of the hearings. He noted that if the Board cannot do its job, many cases would be dropped, which offers a greater harm to consumers than requiring the few hundred physicians who are on probation to notify their patients. He stated he is also concerned about the practical implication of a physician instituting this in their practice. Dr. Krauss stated he felt that with the time involved in not only informing the patient, but discussing the circumstances with the patient, it would likely jeopardize the ability of the physician to stay in practice.

Dr. Krauss stated he found it ironic that this bill is in the State Legislature, and there is no state in the Union that has this requirement. However, Consumer Reports stated that California's website is already the best in terms of access to information regarding misbehavior of a physician (compared to every other state). Yet, California has somehow become a target state for this type of legislation.

Dr. GnanaDev voiced his concerns about patients who are going into surgery and not meeting some of the surgical team until ten minutes before they actually go into the surgery room. He stated that type of information being shared at that time could be detrimental to the patient. He stated he agrees with the staff recommendation of neutral if amended.

Ms. Monserratt-Ramos, Consumers Union, Safe Patient Project, urged the Board to support this legislation as they feel it is the most effective way to keep patients safe and to achieve the Board's policy that all California consumers should know the background, training, certification, and history of disciplinary actions of any healthcare provider they consider seeing. She stated this bill does not represent the same proposal that the Board turned down in October. She noted this bill requires physicians who are on probation for serious issues to inform their patients, to provide a simplified method of disclosure, and to include a similar requirement for other primary healthcare practitioners.

Ms. Balber, Consumer Watchdog, urged the Board to reconsider their position on this bill. She feels that physicians with the most serious disciplinary actions should have to tell their patients at the point of care, as opposed to the Board putting time and funds into an outreach program to put the burden on the consumer.

Ms. Choong, California Medical Association, encouraged the Board to approve the staff recommended amendments, however, she urged the Board take an oppose unless amended position as it should be

made clear that the Board is not neutral, but opposed without the amendments. She also noted that the staff fiscal analysis suggested cases that would result in a stipulated settlement of more than three years would still be stipulated under this bill. She noted that they disagree with this assessment due to the practical impact of the bill's requirement on a physician's practice would be equivalent to a suspension, which will give physicians much less incentive to settle regardless of the length of probation. She noted that they believe the fiscal impact would be much higher than stated by staff.

Ms. Gramme, Center for Public Interest Law, stated they strongly support SB 1033 for the reasons that Consumers Union stated, but also because the Board's probation unit is charged with monitoring physicians on probation and detecting any violations of probation so that the Board can take appropriate action. She stated the probation unit is now comprised of non-sworn probation inspectors with double the case loads of peace officers who investigate the Board's cases. She stated that within the past several years, the probation unit has been unable to keep up with the extremely large caseload. She stated they have seen many petitions to revoke probation documenting probation violations going back a year or more. These petitions had not been filed promptly and the probationary physicians had been able to continue to practice. She stated that for all of these reasons, they urge the Board to support SB 1033.

***Dr. Lewis made a motion to take a neutral, if amended to exempt certain situations and to include all health care providers, position on this bill; s/Ms. Wright.***

Dr. Bishop stated he is concerned about the fact that the longer it takes the Board to resolve a case, the longer that physician has no monitoring. He stated he feels the Board needs to think about the risk/benefit of a neutral position.

***Motion carried, 13-2 (Krauss, Sutton-Wills)***

**AB 1977 (Wood)** Ms. Simoes stated this bill would establish an Opioid Abuse Task Force (Task Force) to develop recommendations regarding the abuse and misuse of opioids. She noted this bill would require, on or before February 1, 2017, health care service plans and health insurer representatives, in collaboration with advocates, experts, health care professionals, and other entities and stakeholders that they deem appropriate, to convene a Task Force. The Task Force would be required to develop recommendations regarding the abuse and misuse of opioids as a serious problem that affects the health, social welfare, and economic welfare of persons in California and address specified issue areas.

Ms. Simoes added this bill would require the Task Force to submit a report detailing its findings and recommendations to the Governor, the President pro Tempore of the Senate, the Speaker of the Assembly, and Assembly and Senate Health Committees by December 31, 2017. The Task Force is required to be dissolved by June 1, 2018.

Ms. Simoes noted this bill furthers the Board's mission of consumer protection and is in line with the Board's work on the important issue of preventing misuse and abuse and inappropriate prescribing of prescription drugs. She stated Board staff believes the issues assigned to the Task Force would be helpful to the Board's work as well, and Board staff would like to participate in the Task Force if the bill is signed into law to ensure the discussions are in line with the Board's Guidelines.

***Dr. Levine made a motion to support this bill; s/Dr. Lewis.***

Dr. GnanaDev stated this is currently the biggest issue for public safety. He feels the Board needs to do whatever it takes to resolve this issue.

Dr. Levine stated that so much work has been done already in trying to get control of this issue. She noted the Centers for Disease Control recently released guidelines and there was a lot of work by the Board's Prescribing Task Force. She feels there is plenty of work already done for the new Task Force to call upon to develop recommendations on this issue.

***Motion carried unanimously.***

**AB 2024 (Wood)** - Ms. Simoes stated this bill would authorize, until January 1, 2024, a federally certified critical access hospital (CAH) to employ physicians and charge for professional services. This bill would specify that the CAH must not interfere with, control or otherwise direct the professional judgment of a physician. This bill would require the Legislative Analyst, on or before July 1, 2023, to provide a report to the Legislature regarding the impact of CAH's employing physicians.

Ms. Simoes noted the Board has always believed that the ban on the corporate practice of medicine provides a very important protection for patients and physicians from inappropriate intrusions into the practice of medicine. That being said, CAHs are in remote, rural areas and this bill would help these hospitals to recruit and retain physicians, which will improve access to care in these rural communities. Ms. Simoes added this bill is a pilot program that will be evaluated and the bill makes it clear that the CAH must not interfere with, control or otherwise direct the professional judgment of a physician.

***Dr. Bishop made a motion for the Board to take a neutral position on this bill; s/Dr. Lewis.***

Dr. Krauss stated he agreed with taking a neutral position, and reminded everyone that not every state has a corporate bar on the practice of medicine. He feels the Board needs to carefully evaluate any law that changes the ban as a potential for trouble. He noted his main concern is always to assure the physician's primary interest is the care of the patient and not serving the interest of an employer.

***Motion carried unanimously.***

**AB 2216 (Bonta)** – Ms. Simoes stated this bill would establish the Teaching Health Center (THC) Primary Care Graduate Medical Education Fund (Fund) in the State Treasury and would require the Director of OSHPD to award planning and development grants from the Fund to THC's for the purpose of establishing new accredited or expanded primary care residency programs. She added this bill would provide that the grants awarded must not be for more than three years and that the maximum award to a THC must not be more than \$500,000.

Ms. Simoes noted this bill would increase funding for residency programs in California, which would help promote the Board's mission of increasing access to care for consumers.

***Dr. GnanaDev made a motion for the Board to take a support position on this bill; s/Dr. Lewis.***

Dr. GnanaDev stated that the Board should do whatever it takes to increase graduate medical education, since most of the positions are concentrated on the east coast. He noted there are so few in California, so this bill is very important.

Dr. Krauss reminded the Board that California is doing a good job in terms of increasing the number of medical school seats, however, statistical analysis shows that the greatest probability of the site of the residents' practice is not where they went to medical school, but where the residency was done. That usually means that many of the California medical school graduates must leave California for residency and then do not return.

Dr. Lewis stated he believes the bigger issue is the lack of funding for these programs from the federal government.

***Motion carried unanimously.***

**AB 2507 (Gordon)** Ms. Simoes stated this bill would specify that the definition of telehealth includes video and telephone communications. The bill would allow the acceptable forms of prior consent to include digital consent, in addition to the verbal and oral consent allowed in existing law. She noted this bill would prohibit health care providers from requiring the use of telehealth when it is not appropriate. Ms. Simoes added this bill would specify that a patient shall not be precluded from receiving in-person health care delivery services.

Ms. Simoes added this bill would also provide a telehealth reimbursement infrastructure and would require the same coverage and reimbursement for services provided to a patient through telehealth as is required when the patient receives equivalent services in person. This bill would specify that all laws regarding the confidentiality of health care information and a patient's right to his or her medical information shall apply to telehealth services.

Ms. Simoes stated Board staff believes the changes this bill would make to existing telehealth law would not have a negative impact on consumer protection and may increase access to care.

***Dr. Bholat made a motion for the Board to take a support position on this bill; s/Dr. Lewis.***

Dr. Levine stated after looking at the language of the bill, she believes this bill just adds video and telephone, it does not expand protections that were in the prior bill that was passed in telehealth.

Ms. Kirchmeyer added that any complaint that was received would be looked at from the standard of care perspective no matter what type of communication was used for the patient.

***Motion carried unanimously.***

**AB 2592 (Cooper)** Ms. Simoes stated this bill would require CDPH to establish a pilot program, if funding is available, to award grants to combat opioid abuse through the safe prescribing of opioids. CDPH would determine the amount of grants to award to individual pharmacies that choose to participate in the program. She added that grants must target areas where the prevalence of prescription drug abuse is high, as determined by data that has been collected by CDPH and the California Health Care Foundation. She noted that a pharmacy that applies for and receives a grant, would be required to offer all patients who are prescribed an opioid a medicine locking closure package. Ms. Simoes stated a patient would not receive the medicine locking closure package unless he or she consents either orally or in writing. She added this bill would define a medicine locking closure package as a locking closure container, unlocked only with a user-generated code, that only allows the person with the prescription to access the medicine. Ms. Simoes noted the medicine locking closure package includes, but is not limited to, an amber prescription container combined with a resettable alphanumeric code. This bill

would specify that CDPH shall not expend General Fund moneys on this program unless those moneys are specifically appropriated for this purpose. She added this bill would allow CDPH to seek funds from private entities, including foundations and nonprofit organizations, and CDPH may apply for federal or other grants to fund this pilot program. This bill would require CDPH to evaluate the effectiveness of the pilot program and to report its findings to the Legislature no later than December 31, 2019. This bill would sunset the pilot program on January 1, 2020.

Ms. Simoes stated this bill furthers the Board's mission of consumer protection and is in line with the Board's work on the important issue of preventing misuse and abuse of prescription drugs.

***Dr. Lewis made a motion for the Board to support this bill; s/Dr. Krauss.***

Dr. Levine recommended that language be included in the bill to say this pilot program be constructed with matched controls with a scientific approach so that CDPH can determine if it actually made a difference in the opioid misuse issue.

Ms. Sparrevohn, Licensed Midwife, stated the only target audience she sees for this are people who have an opioid prescription and an opioid abuser in the home. She feels that the number of people who opt into this are very small.

Dr. Bishop stated that unless it is a device that is bolted down or bullet proof, he feels that anyone who wanted to get into the prescription bottle bad enough, would be able to get into it somehow.

***Motion carried with the understanding that Dr. Levine's comments be passed on to the author, 8-3 (Feinstein, Lawson, Yip) -4 Abstain (Bishop, GnanaDev, Levine, Wright).***

**AB 2606 (Grove)** Ms. Simoes stated this bill would require a law enforcement agency that receives or makes a report of the commission of specified crimes by a person who holds a state professional or occupational credential, license, or permit allowing the person to provide services to children, elders, dependent adults, or persons with disabilities, to provide a copy of that report to the state agency that issued the credential, license, or permit, including the Board. She stated Board staff believes that this information would be very helpful to the Board to identify physicians that could possibly pose a threat to vulnerable consumers. She added that once the Board receives this information, it would still go through the Board's normal complaint and investigation process, which is confidential. Ms. Simoes noted this bill was recently amended, but the amendments were minor and do not impact the Board's analysis.

***Dr. GnanaDev made a motion for the Board to support this bill; s/Dr. Levine. Motion carried unanimously.***

**AB 2744 (Gordon)** Ms. Simoes stated the bill would expressly provide that payment or receipt of consideration for advertising, where a licensee offers or sells services on the Internet, shall not constitute a referral of patients. She stated this bill would require the licensee to fully refund the purchaser if, after consultation, the licensee determines the service is not appropriate for the purchaser. She added this bill would specify that it does not apply to basic health care services or essential health benefits and this bill would require the entity that provides the advertising to demonstrate that the licensee consented in writing to the requirements of the bill.

Ms. Simoes noted that Board staff has already looked at the issue of internet advertising for physicians with companies like Groupon and Living Social, and does not believe that these arrangement are in violation of existing referral law. This bill would make it clear that this type of advertising is not in violation of existing law and would add protections for consumers to be refunded if the service is not appropriate.

***Dr. Lewis made a motion for the Board to take a neutral position.***

***Motion carried, 9-2 (Feinstein, Sutton-Wills) -4 Abstain (GnanaDev, Lawson, Warmoth, Wright).***

**SB 22 (Roth, Cannella , and Galgiani)** Ms. Simoes stated this bill was substantially amended since the last Board Meeting. She noted this bill would continuously appropriate \$300 million from the General Fund (over a three-year period) to the OSHPD for the purpose of funding new and existing graduate medical education physician residency positions, and support training faculty, pursuant to the Song-Brown Health Care Workforce Training Act. This bill would increase funding for residency programs in California, which would help promote the Board's mission of increasing access to care for consumers. This bill would also allow more physicians to receive residency training and potentially end up practicing in California.

***Dr. GnanaDev made a motion for the Board to support this bill; s/Dr. Krauss. Motion carried unanimously.***

**SB 482 (Lara)** Ms. Simoes stated the bill would require all prescribers issuing Schedules II and III drugs to access and consult the CURES database before prescribing a Schedule II or III controlled substance under specified conditions. She added this bill would specify that a prescriber is not liable in a civil action solely for failing to consult the CURES database as required by this bill.

She stated the bill would specify that the requirement to consult the CURES database does not apply if any of the following conditions are met:

- The CURES database is suspended or inaccessible, the internet is not operational, the data in the CURES database is inaccurate or incomplete, or it is not possible to query the CURES database in a timely manner because of an emergency.
- The controlled substance is prescribed to a patient receiving hospice care.
- The controlled substance is prescribed to a patient as part of a surgical procedure that has or will occur in a licensed health care facility and the prescription is non-refillable.
- The controlled substance is directly administered to the patient by the prescriber or another person authorized to prescribe a controlled substance.

Ms. Simoes noted this bill would specify that it is not operative until the Department of Justice (DOJ) certifies that the CURES database is ready for statewide use. DOJ would be required to notify the Secretary of State and the Office of Legislative Counsel of the date of that certification.

Ms. Simoes added that the bill only requires the CURES database to be checked for an initial prescription of a Schedule II or III controlled substance, on an annual basis if that controlled substance is still being prescribed, or if the same controlled substance has already been prescribed. This bill would also ensure that the CURES system will have the capacity to handle this workload before the bill becomes operative. She added this bill would further the Board's goal of consumer protection and take steps forward in addressing the issue of doctor shopping and opioid abuse.

Ms. Kirchmeyer stated there was a public comment that was received and was handed out to each of the Members for review.

Ms. Choong, CMA, stated SB 482 was amended to expand the exemptions from the blanket duty to consult in the previous version of the bill and they agree that the previous language failed to take into consideration the many situations in which a duty to consult would not be reasonable. However, she stated, the exemptions as drafted are problematic. She noted, for example, the language provides an exemption for checking when the prescription is prescribed for surgery in a licensed facility. They agree that a mandatory consultation is not reasonable when a prescription is for surgery, however, the language excludes surgery performed in an OSS. She added the language attempts to provide an exemption for administration in patient settings, which makes sense, but the mechanism for doing it is flawed. Ms. Choong noted they feel there should be a third party that certifies the database is ready for statewide use. Ms. Choong also stated that CMA strongly cautions the Board against supporting this bill based on a conceptual idea without attention to the details.

Ms. Balber, Consumer Watchdog, stated the AG's office has been at the Board meetings several times to update the Board on how CURES is functioning and are extremely pleased with the way it is working. She stated she understands that CMA has been strongly opposed to the mandatory use of CURES for several years now and claiming technical difficulties is one way for them to object to mandatory use. She stated that the biggest complaint she is hearing about CURES is physicians not understanding how to go through the registration system to get signed up. She stated the Consumer Watchdog urges the Board to hold its support position.

Ms. D'Angelo Fellmeth, Center for Public Interest Law, stated that in states that have required the use of a Prescription Drug Monitoring Program (PDMP), "Doctor shopping" has dropped tremendously, which is what is needed in California, and she urged the Board to hold its support position on this bill.

Dr. GnanaDev stated he agreed with some of CMA's concerns in regard to the settings. However, he also stated he is a strong supporter of PDMP. He noted that the answer is to have a PDMP with appropriate exemptions in facility settings.

Dr. Yip stated he feels this burden should be shared by the hospitals and OSSs. He thinks that when they give the physician the printout of the medication, they should also be required to include a history of prescribed medications for the patient.

Dr. Bishop asked who all has the authority to access CURES.

Ms. Kirchmeyer stated that anyone who is authorized to dispense, prescribe or administer controlled substances. As long as the person has a DEA and a license they can access CURES.

Dr. Bishop stated that he would like to see an amendment where a designated individual, such as a designated RN, be able to assist by obtaining a CURES report. This would be very important for a busy practice or Emergency Department.

Ms. Kirchmeyer stated that when CURES 2.0 was released, it included a way to designate someone to request the CURES information, but the physician has to be the one to print it out.

Dr. Krauss noted he speaks in favor of support. He understands the concerns being heard today, and feels there will always be a need for some exemption. He stated that he would be disappointed to

imagine that after the time and effort being put into creating the CURES system, these would be road blocks put up in requiring its use.

Dr. GnanaDev clarified that with a physician's delegate they can access the CURES system and request the information for the physician, however, the actual information is sent directly to the physician and not the requestor, as it is HIPPA protected.

***Dr. Krauss made a motion for the Board to support this bill with technical assistance to define what "inaccessible" means; s/Dr. Lewis. Motion carried unanimously.***

**SB 1174 (McGuire)** Ms. Kirchmeyer stated this bill would add to the Board's priorities acts of clearly excessive prescribing, furnishing, or administering psychotropic medications to a minor without a good faith prior examination of the patient and medical reason therefor. She noted that although the Board already has excessive prescribing of controlled substances in its priorities, many psychotropic medications are not controlled substances, so they would not be covered in the Board's existing priorities.

Ms. Kirchmeyer stated this bill would require DHCS, in collaboration with DSS, to provide quarterly data to the Board that includes, but is not limited to, the child welfare psychotropic medication measures and the Healthcare Effectiveness Data and Information Set measures related to psychotropic medications. She added this bill would specify that the data provided to the Board shall include a breakdown by population, as specified.

Ms. Kirchmeyer noted this bill would require the Board to review the data provided by DHCS and DSS on a quarterly basis to determine if any potential violations of law or excessive prescribing of psychotropic medications inconsistent with the standard of care exist, and if warranted, conduct an investigation. This bill would require the Board to take disciplinary action, as appropriate. Lastly, this bill would require the Board to provide a quarterly report on the results of the data analysis to the Legislature, DHCS and DSS. Ms. Kirchmeyer noted that anecdotally, the Board does not receive complaints regarding overprescribing of psychotropic medications to foster children. The data required to be submitted to the Board pursuant to this bill will ensure that the Board can review prescribing data on an on-going basis to help identify physicians who may be inappropriately prescribing. The data the Board has received under the existing data use agreement (DUA) is only a snapshot in time, for a 6 month time period in 2014. Any information that can help the Board identify inappropriate prescribing can be utilized as a tool for the Board to use in its complaint and investigation process. However, once a possible inappropriate prescriber is identified, the board will still have to go through its normal complaint and investigation process.

***Dr. Lewis made a motion for the Board to support this bill with needed amendments including a sunset date and clearly identifying what data will be received; s/Dr. Krauss.***

Dr. GnanaDev noted that his concern is that this is a huge problem in institutions with DSS and the Board is addressing peripheral issues rather than the real issue, which is getting support for these kids with mental health issues.

Judge Feinstein expressed her concerns about this bill not addressing enough of the problem. She stated this is a county issue and in many areas, these kids are not being prescribed medication by licensed, board certified child psychiatrists. She stated the important thing is to have what is being done reviewed by someone who is an expert and can assess the situation.

Ms. Kirchmeyer stated Judge Feinstein is correct. This bill does not solve the problem and it is just one small portion of a much larger issue. Ms. Kirchmeyer noted that this at least makes sure that the Board gets the data so it can be reviewed. Staff has discussed this issue with all entities involved including the Senator's office numerous times, letting them know that the thing that would make the biggest impact is anyone who witnesses what appears to be inappropriate prescribing should report it the Board immediately.

Ms. Sparrevohn stated she is concerned about there only being one physician in certain rural areas and this bill may discourage that physician to not want to see foster children.

Ms. Balber stated that Consumer Watchdog supports this bill. She noted the legislature passed three similar bills last year that requires more information and oversight by the county and state level, but this bill goes specifically to accountability.

***Motion carried, 13-0-2 Abstain (Feinstein and Levine).***

**SB 1177 (Galgiani)** Ms. Simoes stated this bill would authorize establishment of a physician and surgeon health and wellness program (PHWP) within the Board. The PHWP would provide early identification of, and appropriate interventions to support a physician in the rehabilitation from substance abuse to ensure that the licensee remains able to practice medicine in a manner that will not endanger the public health and safety and maintain the integrity of the medical profession. Ms. Simoes noted the PHWP shall aid a physician with substance abuse issues impacting his or her ability to practice medicine.

She noted the bill states if the Board establishes a program, it shall do all the following:

- Provide for the education of all licensed physician and surgeons with respect to the recognition and prevention of physical, emotional, and psychological problems.
- Offer assistance to a physician in identifying substance abuse problems.
- Evaluate the extent of substance abuse problems and refer the physician to the appropriate treatment by executing a written agreement with the physician participant.
- Provide for the confidential participation by a physician with substance abuse issues who is not the subject of a current investigation.
- Comply with the Uniform Standards for Substance-Abusing Healing Arts Licensees as adopted by the Substance Abuse Coordination Committee of the Department of Consumer Affairs pursuant to Section 315.

Ms. Simoes stated if the Board establishes a PHWP, it would be required to contract for the program's administration with a private third-party independent administering entity pursuant to a request for proposals. She noted the administering entity would be required to have expertise and experience in the areas of substance or alcohol abuse in healing arts professionals. The administering entity would be required to identify and use a statewide treatment resource network that includes treatment and screening programs and support groups and would be required to establish a process for evaluating the effectiveness of such programs. Ms. Simoes added the administering entity would be required to provide counseling and support for the physician participant and for the family of any physician referred for treatment. The administering entity would have to make their services available to all licensed California physicians, including those who self-refer to the PHWP. The administering entity would be required to have a system for immediately reporting a physician who is terminated from the program to the Board. The system would need to ensure absolute confidentiality in the communication

to the Board. Ms. Simoes stated the administering entity could not provide this information to any other individual or entity unless authorized by the physician participant. The contract entered into with the Board would need to require specified requirements.

Ms. Simoes stated if the Board determined the administering entity was not in compliance with the requirements of the program or contract entered into with the Board, the Board would be able to terminate the contract.

Ms. Simoes noted this bill would require a physician, as a condition of participation in the PHWP, to enter into an individual agreement with the PHWP and agree to pay expenses related to treatment, monitoring, laboratory tests, and other activities specified in the written agreement.

Ms. Simoes added this bill would specify that any agreement entered into would not be considered a disciplinary action or order by the Board and shall not be disclosed if the physician did not enroll in the PHWP as a condition of probation or as a result of an action by the Board and if the physician participant is in compliance with the conditions and procedures in the agreement.

Ms. Simoes added this bill would establish the Physician and Surgeon Health and Wellness Program Account in the contingent fund of the Board. Any fees collected by the Board from participants shall be deposited into this account and upon appropriation by the Legislature, shall be available for support of the program. She stated this bill would require the Board to adopt regulations to determine the appropriate fee that a physician participating in the PHWP shall pay. The fee is required to be set at a level sufficient to cover all costs of participating in the PHWP. This bill would allow the Board, subject to appropriation by the Legislature, to use moneys from the Board's existing contingent fund to support the initial costs for the Board to establish the PHWP. These moneys could not be used to cover costs for individual physicians to participate in the program.

Ms. Simoes stated the PHWP proposed by this bill is not a diversion program, it will not divert physicians from discipline; this is of utmost importance for consumer protection. She added the Board will not be running this program, it will be run by a private third-party independent administering entity that will be selected pursuant to the request for proposals process. This bill would require the PHWP to comply with the Uniform Standards and would require any physician participants who terminate or withdraw from the PHWP to be reported to the Board. She stated these are both very important elements for consumer protection. This bill would also allow for communication to the Board for those physicians ordered to the PHWP as a condition of probation, which is also important for consumer protection. Ms. Simoes noted that currently, the bill states that physician participants under Board investigation are not allowed confidential participation, however, participants should be provided confidentiality unless they are on probation, they terminate or withdraw from the program, or are subject to disclosure pursuant to the Uniform Standards. Board staff can work with the author's office to ensure that this amendment is made if the Board agrees, and in fact this amendment has already been drafted.

Ms. D'Angelo Fellmeth stated that several areas of this bill are not consistent with the Uniform Standards that the Board voted on and put into place. In other parts of the bill, it sets forth standards and requirements that are also not consistent with the Uniform Standards nor are they consistent with the regulations that implement the Uniform Standards. She stated if this bill should pass as is, it will trump the Board's Uniform Standards which is unacceptable. She also stated the bill should require the Board to establish a standing committee that meets in public to discuss participants.

Ms. Balber agreed with everything that Ms. Fellmeth said, and added the bill specifically stated the program would be required to notify the Board if a physician withdraws or is terminated from the program, whereas the Uniform Standards required reporting to the Board on any failure to comply, which includes a failed drug test. She felt this is one of the key inconsistencies that the Board needed to be absolute that the bill corrects.

Ms. Monserratt-Ramos stated Consumers Union, Safe Patient Project opposes this bill. It does not conform with the Uniform Standards and there is no need to create a program that may undermine the oversight responsibility of the Board. She stated if physicians have the right to engage in substance abuse, then their patients have a right to know about it. She stated they also agree with Ms. Fellmeth's request to have the Board create a standing committee of the Board, both public and physician members, to have oversight over the program to ensure the Uniform Standards are met.

Ms. Choong, California Medical Association, stated they are sponsors of this bill, and support the staff recommendation to the Board to support this bill. She noted they appreciated the Board's assistance in working with them and the stakeholders to create and meet all of the principles of the bill. She reiterated that this is not a diversion program, but a program to address a gap in early identification and intervention for physicians in crisis who are suffering from these types of issues.

Dr. Krauss stated his concern is that in the absence of a health and wellness program, physicians tend to hide their depression and their substance abuse issues, and he stated he does not know any other state that does not have some sort of physician health and wellness program. He stated the bill is certainly appropriate and needed, and if flaws are detected along the way, the Board may need to have regulations to address those.

***Dr. Lewis made a motion for the Board to support this bill; s/Dr. Krauss.***

Dr. Bishop asked Ms. Simoes to bring the concerns that were brought up by all parties during the discussion today to the author's attention.

Ms. Simoes stated she is still working with the author and would be sure to mention them.

Dr. Bholat recommended adding a subcommittee as discussed.

Mr. Serrano Sewell stated that once the bill is passed and signed, it is recommended the Board set up a standing subcommittee on this issue.

***Motion carried unanimously.***

**SB 1189 (Pan and Jackson)** Ms. Simoes stated this bill would require a forensic autopsy to be considered the practice of medicine and would expressly state that forensic autopsies can only be conducted by a licensed physician and surgeon. This bill would require that the results of an autopsy may only be determined by a licensed physician and surgeon. She noted this bill would define a forensic autopsy as an examination of a body of a decedent to generate medical evidence for which the cause and manner of death is determined, along with other provisions. Ms. Simoes added the Ventura County District Attorney's (DA) Office published a report in February 2016 entitled "A Report on the Ventura County Medical Examiner Investigation." In this report, the Ventura County DA reviewed the investigation it conducted on Ventura County's former Medical Examiner (ME), and discussed the obstacles faced by the DA's office in pursuing criminal action. She stated also in the report, it brought

up several grey areas of law related to autopsies and who can perform them. The report stated that there is no California law that defines an autopsy and there is no statute that clearly defines that performance of an autopsy is the practice of medicine. The report also stated there is a need for legislation to clarify whether the performance of an autopsy is included in the practice of medicine.

Ms. Simoes stated after reading the Ventura County DA report, and in discussions with Senator Jackson's office, Board staff believes there are grey areas in the law related to autopsies being the practice of medicine and who can perform autopsies. It should be made clear in the law that autopsies are the practice of medicine and can only be performed by licensed physicians and surgeons. She stated this clarification will assist the Board in its enforcement actions and further the Board's mission of consumer protection.

***Dr. Lewis made a motion for the Board to support this bill; s/Dr. GnanaDev.***

Mr. Schwartz, Ventura County District Attorney's Office, stated the report that was referenced by staff could be found on their website and refers to a complaint they received in regard to an administrator who was opening up bodies, manipulating organs, and taking samples, although he had no medical training, while the ME was on vacation. This ME had been communicating with the administrator via email, and when the ME returned from vacation, he signed off on the death certificates for bodies he had never seen. Mr. Schwartz felt the law should reflect that autopsies must be done by a physician only and not by staff.

Judge Feinstein stated that Ventura County is not the only county that has suffered adversely from situations like this and sheriffs are not trained in medicine and not qualified to perform autopsies.

***Motion carried unanimously.***

**For SB 1261 (Stone)**, Ms. Simoes stated Members were given an updated copy of this bill as it was substantially amended and now would allow out-of-state physicians who are licensed in California to have license and renewal fees waived if they certify to the board that the sole purpose of their license is to provide voluntary, unpaid service.

***Dr. Lewis made a motion for the Board to take a neutral position on this bill; s/Judge Feinstein.***  
***Motion carried unanimously.***

**SB 1471 (Hernandez)**, Ms. Simoes stated that under current law, revenue from fines and penalties levied on health plans is deposited in the Managed Care Administrative Fines and Penalties Fund (MCAFPF). She noted that existing law requires fines and penalties collected up to \$1 million to be deposited into the Medically Underserved Account for Physicians (MUAP) in the HPEF for purposes of the Steven M. Thompson Loan Repayment Program (STLRP). Existing law requires any amount over the first \$1 million to be transferred to the Major Risk Medical Insurance Fund to be used, upon appropriation by the Legislature by the Major Risk Medical Insurance Program. Ms. Simoes stated that this bill starting January 1, 2017, and annually, thereafter, any amount over the first two million, including accrued interest is to be transferred to the HPEF for the STLRP program. She stated this bill would allow one-half of these moneys to be prioritized to fund repayment of loans for those physicians who are trained in, and practice, psychiatry, as specified. This bill would also make other conforming changes and delete references to inoperative programs.

Ms. Simoes added this bill would provide much needed funding for the STLRP to assist with loan repayment for physicians who agree to practice in medically underserved areas of the state, as well as prioritize new funds for those who are trained in, and practice, psychiatry.

***Dr. Lewis made a motion for the Board to support this bill; s/Dr. Yip. Motion carried unanimously.***

Ms. Simoes then moved to item 15C, stating the regulation matrix is included in the Board packets and she can answer any questions.

**Agenda Item 16      Update, Discussion and Possible Action on Recommendations from the Licensing Committee**

Dr. Bishop stated that Mr. Worden had given a great presentation regarding minimum requirements for Board recognized accredited postgraduate training. The presentation focused on the possible need to increase the minimum requirements for postgraduate training. He noted since the way medical education was taught in the 1980s, it is very different than the way it is being taught today, not to mention the mass expansion in knowledge and skills necessary to be a functioning physician. He stated Mr. Worden explained the pros and cons of increasing the minimum requirements. He noted if the minimum requirements were increased, there would be a need for a training license. Mr. Worden discussed in general terms what a training license would allow a resident to do and when a training license would be issued. Dr. Bishop stated that Mr. Worden would be sending a Power Point presentation out for review by some of the UC Associate Deans for Graduate Medical Education (GME) for input and will then provide the Power Point to designated institutional officers to present at a monthly GME Program Director meeting to obtain input for Board staff to help identify issues and the lead time it would take to implement any needed changes. He noted the increase in the minimum requirement may eliminate the need for Board staff to review international medical schools and instead use the list of medical schools in the World Directory of Medical Schools. That directory had been developed through a partnership between the World Federation for Medical Education and the Foundation for Advancement of International Medical Education and Research.

Mr. Worden also gave a presentation on special faculty permits (SFP) that included some historical background, the number of SFPs that have been issued since the start of the program, along with the number of current permits. He stated Board staff had sent out a survey to medical schools regarding the need and asked if any medical schools had any need and/or recommended changes that should be considered by the Board. Mr. Worden presented the results of the survey.

Dr. Bishop noted that Mr. Worden had also given a presentation on the current Special Programs that the Board approves pursuant to the Business and Professions Code and California Code of Regulations sections.

Dr. Levine congratulated Mr. Worden for his terrific work as she feels there is nothing more important to protecting consumers than looking at raising the bar for getting a license to practice medicine in California.

**Agenda Item 17      Discussion and Possible Action on Universidad de Guadalajara Application for Recognition**

Mr. Worden asked the Board for approval for the Universidad de Guadalajara (UAG) School of Medicine's international program. Staff requested the Board recognize UAG's four-year curriculum and deem it to be in compliance with BPC 2089 and 2089.5 and CCR, Title 16,

Division 13, Section 1314.1. He noted the prepared reports could be found on pages BRD 17-1 and BRD 17-2 in the Board packets.

***Dr. Lewis made a motion for the Board to accept UAG's application for recognition; s/Dr. Krauss.***

Marianne Hollingsworth expressed her personal concern about the Board accepting UAG's application. She stated she had been working on a list of egregious offenses by physicians in California along with other interested parties, and has noticed that UAG showed up frequently as the medical school that some of the physicians have attended, and some of the most frequently cited disciplines were for sexual misconduct. She suggested that in order for UAG to receive recognition, they mandate a class on ethics and boundaries.

Mr. Boreman stated he was grateful to work with Mr. Worden and staff as they did a wonderful job through a difficult review process. He stated the Board had been very fair and balanced in their approach.

***Motion carried unanimously.***

**Agenda Item 18      Discussion and Possible Action on Proposed Regulations for Midwife Assistants, adding Title 16, Division 13, CCR sections 1379.01 through 1379.09**

Ms. Webb referred the Members to tab 18 in their Board packet. She stated that effective January 1, 2016, SB 408 created BPC section 2516.5, which formally allows licensed midwives, and certified nurse midwives to use midwife assistants in their practices. She stated midwife assistants are unlicensed individuals who must meet specific requirements pursuant to BPC section 2069, which deals with medical assistants. They also must meet other requirements established by the Board through the regulatory process. She noted the Board staff had held an interested parties meeting to receive input on drafting the proposed regulations. These draft regulations were presented to the Midwifery Advisory Council (MAC) on March 10, 2016, where additional input was received.

Ms. Webb stated staff was requesting authorization from the Board to initiate the rulemaking process and to formally notice the proposed language for public comment and a hearing to be set at a future Board meeting. Ms. Webb noted that the regulations address the qualifications to be a midwife assistant, who can supervise, what type of technical assistance they can provide, training by licensed midwives and certified nurse midwives, and any schools the Board anticipates will develop to fill this need.

Ms. Brigalia, Licensed Midwife, stated that currently, they are only allowed to use students from an approved school or other licensed midwives as assistants. She noted that assistants are needed and what this bill would allow is for midwives to have an assistant that is not another licensed midwife, which would make midwives more available for other needs.

***Dr. Lewis made a motion to approve authorization to initiate the rulemaking process and to notice the approved language for public comment and to have a hearing scheduled at the Board's next meeting; s/Judge Feinstein. Motion carried unanimously.***

**Agenda Item 19      Update, Discussion and Possible Action on Recommendations from the Midwifery Advisory Council Meeting**

Ms. Sparrevohn, MAC Chair, began by thanking the Board for voting to approve the authorization to initiate the rulemaking process for the proposed midwife assistant regulations. She stated her full report could be found in the Board packets under tab 19. She did, however, comment on the action by the MAC at their March 10, 2016, meeting where Dr. Anne Marie Adams was recommended for the vacant physician position on the MAC. She noted that Dr. Adams had already attended several MAC meetings and interested parties meetings that pertain to Licensed Midwives and her participation, comments and suggestions had been well received. She also brings a unique skill set and insight as a physician who is actively practicing in home birth settings and attending peer review with licensed midwives.

Ms. Sparrevohn then asked for approval of the following agenda items for the next MAC meeting.

- Task Force Update:
  - Update on Revisions to Licensed Midwife Annual Report (LMAR)
- Update on continuing regulatory efforts required by AB 1308
- Update on the Hospital Transfer Form
- Update on midwifery related legislation expected to be introduced or followed this year
- Update on the midwifery program
- Discussion and approval of MAC licensed midwife position that was not filled in March
- Update on progress with midwifery assistant regulations
- Report from the California Association of Licensed Midwives on the new Quality Care Program

***Dr. Krauss made a motion to approve the requested agenda items for the next MAC meeting; s/Dr. Levine. Motion carried unanimously.***

**Agenda Item 20      Discussion and Possible Action on Midwifery Advisory Council Appointments**

Mr. Worden asked for Board approval to appoint Dr. Anne Marie Adams to the vacant physician member position on the MAC. He also asked for Board approval to appoint Jocelyn Dugan to the vacant public member position. He then stated staff recommended that if at the August 18, 2016 MAC meeting, they vote to recommend a licensed midwife to the vacant midwife position, the candidate be permitted to sit on the MAC at the meeting pending Board approval at the Board's October 2016 meeting.

***Dr. Lewis made a motion to approve Ms. Dugan for the vacant public member position, and to approve Dr. Adams to the vacant physician member position to the MAC and included in the motion the approval to allow the licensed midwife position to sit on the MAC at the August MAC meeting prior to the Board's approval; s/Mr. Warmoth. Motion carried unanimously.***

**Agenda Item 21      Investigation and Vertical Enforcement Program Report**

Mr. Chriss, Chief of DCA's Division of Investigation (DOI), and Ms. Nicholls, Deputy Chief, provided an update on the Health Quality Investigation Unit (HQIU). Mr. Chriss stated it was asserted at the last Board meeting that HQIU vacancies were adversely affecting Vertical

Enforcement (VE). He stated they had been analyzing the root cause of investigator vacancies and determined there are two main factors, pay and the VE system itself. He continued stating in regard to the pay issue, a retention pay proposal for HQIU investigators had been prepared by DOI. It was hopeful that it would be addressed in the collective bargaining process, which is currently taking place. In February 2016, HQIU had sent out a confidential survey via Survey Monkey to sworn investigators to solicit feedback on the VE program and to get suggestions on improvements to the program. He stated the feedback report had been shared with Ms. Kirchmeyer and Ms. Delp and he would be working with the Board and the AG's Office to discuss improvements to the program to maximize efficiencies and to reduce vacancies.

Mr. Chriss stated they had taken active steps to assist with the workload. He noted they had initiated an emergency pilot project to fill six special investigator assistant positions statewide. He noted these positions did not require full peace officer backgrounds and are vital to assisting with investigator tasks, such as obtaining court records, medical records and releases, servicing subpoenas, and providing support for sworn investigator staff. These positions could also identify and develop great potential candidates for sworn peace officer positions. Mr. Chriss stated they had also contacted recently retired investigators to re-hire them as retired annuitants. He noted that supervisors were also carrying an active caseload to assist in the backlog. Overtime had been approved for existing investigators to help manage the larger caseload.

Mr. Chriss noted they had streamlined the background process to identify any potential issues that disqualify candidates up front, so the focus can be put on the backgrounds that would result in successful hires. He stated they were actively filling vacancies and had upcoming investigator interviews scheduled for several offices.

He stated the HQIU staff had worked with the Board and the AG's Office in developing a new case disposition procedure to streamline the process and to improve processing times once the investigation is complete. He noted that collaboration was successful and the new procedure went into effect on May 3, 2016.

Mr. Chriss stated that it was also reported at the last Board meeting by the AG's Office that the majority of the criminal cases referred do not result in filings. He noted that this information was not correct. He stated that during the FY 15/16, 26 cases for criminal prosecution were referred for prosecution. He stated 15 of them had been filed, 2 had been rejected and 9 were still pending final decisions by the district attorney. For FY 14/15, 40 criminal cases were filed and 23 were rejected. He noted that on March 4, 2016, a complete list of all active criminal cases for their 12 field offices was sent to Ms. Castro. He stated there were only 110 cases on that list that involved licensees, and 11 of them were physician cases, while 6 others were allied health cases. The remaining 93 cases were unlicensed individuals and not under the purview of the AG's Office and have no licensing component. Those 17 cases represent only 1.3% of the total case load. He noted that for full transparency purposes, they will be providing the AG's Office with full and complete spreadsheets of all active cases to avoid confusion moving forward. Mr. Chriss added that the transfer of investigators to the HQIU did not increase criminal referrals when compared to prior years.

Mr. Chriss stated that additionally, they had worked with the Board and the AG's Office to develop parallel prosecution guidelines to ensure that public protection is achieved in cases that are criminal. He noted that meetings to develop these guidelines had begun in December 2015. One of the key functions of this process was to have dual referrals made to the District

Attorney's (DA) Office and the AG's Office simultaneously. The AG's Office would be reviewing that case for filing an accusation and would recommend any additional evidence needed to pursue the administrative case and monitor any statute or issues. When the case is received in the field office, the AG's Office would continue to review all incoming cases and help identify those cases that might necessitate interim suspension orders.

Mr. Chriss noted that the HQIU staff had participated in the Board's recent expert reviewer training in San Diego on March 19, 2016. They are continuing to assist in this valuable project and are working with Board staff to determine future training dates for the Los Angeles and Northern California area. He stated they have two joint training sessions scheduled with the AG's Office regarding 805 investigations. These trainings are a collaborative effort that would lead to statewide consistency in investigative methods and evidence collection. He added a cloud based information sharing system had been implemented in April 2016. This system will allow HQIU to share data with the AG's Office. All information will be scanned and uploaded to the cloud for assigned attorneys to review and provide feedback. This system will help eliminate communication gaps for document review.

Ms. Chriss stated that ongoing meetings had been established with Ms. Kirchmeyer and Ms. Delp regarding important HQIU issues as they develop.

Ms. Chriss stated that the HQIU investigators are their most important resource. Their cases are very serious and complex and the investigative staff are very educated, very experienced and skilled at working these types of cases. He noted staff had persevered despite shortages and system challenges. They are true professionals and he stated he is very proud of them and also proud to be their Chief.

Ms. Nicholls gave a brief update on the interviews that they had or that are currently scheduled. She noted that she is personally sitting on all of the interview panels, since these positions are so critical and a vital part of reducing their vacancies. There were interviews in several different district offices and they still had more to come. She noted they are very aggressively trying to get people interviewed and positions filled with qualified candidates.

Dr. Levine asked if the HQIU had put any retention strategies in place for current staff.

Ms. Nicholls stated there was a retention plan submitted as part of the proposal asking for an increase in investigator pay. In addition, they completed the survey to help identify things that are causing job dissatisfaction. She noted they will be working aggressively with Ms. Kirchmeyer and Ms. Castro to make improvements to encourage the current staff to stay with the unit.

Dr. Levine added that she was thinking more in terms of non-monetary strategies.

Ms. Nicholls stated they are developing a continuous improvement team that will be comprised of a handful of investigators from each area and one of the team's first projects is discussing a retention recognition system for those who stay with the unit. This team will be developing ways, other than monetarily, to help recognize those staff. She stated she hoped to have some updates on this team's ideas, at future Board meetings.

Dr. Bholat asked Mr. Chriss what their recruitment process is in the sense of how they advertise the position to make it inviting for applicants.

Mr. Chriss stated it is advertised as a peace officer position and he noted that the knowledge base and education that are part of the minimum qualifications tend to attract the folks that are passionate about that type of work, and they also emphasize the training that is given with these types of positions. He noted there had been some pay issues, but felt pretty optimistic about many of the ways they are working on improving the recruitment process.

Judge Feinstein asked if there is an estimate of the number of cases that are pending for either referral for prosecution or are already in simultaneous criminal prosecution.

Mr. Chriss stated that for criminal prosecution, it would be approximately two percent of their cases. He noted some cases are so egregious on the front end that they would need criminal prosecution, which is one reason he is pleased to have the parallel prosecution policy in place.

Ms. Kirchmeyer stated this situation had not gone unnoticed by the Board. The Board still has four and one half positions that are non-sworn positions that they will be filling to expand that unit. They would be given some of the less complex cases from the HQIU.

Ms. Castro stated that she, her management team, her DAGs, and the lead prosecutors are very happy with the leadership since Mr. Chriss has stepped into that role.

Ms. Castro then stated that as of her last report at the previous Board meeting, regarding the criminal investigations, all of the issues that she had raised had been resolved to her satisfaction and all of her concerns had been addressed.

Ms. Castro noted that she was pleased to see that several of her favorite investigators are still with the HQIU, as they are very elite investigators who have a very technical background, and she is not surprised that they are being sought out by other agencies that want those skills in their offices. She reiterated that she was quite pleased with the HQIU and its leadership.

Ms. Castro stated she meets with Ms. Kirchmeyer and Ms. Delp to continue to discuss data reconciliation efforts and any efficiencies that can be put into place at the Complaint Investigation Office as well as the probation unit at Ms. Kirchmeyer's office.

## **Agenda Item 22      Update from the Attorney General's Office**

Ms. Castro thanked the Board for providing a letter to one of their most elite Supervising Deputy Attorney Generals (SDAG), Jose Guerrero, who recently retired. She stated that it meant a lot to her and her staff to have Ms. Kirchmeyer join them at the retirement gathering.

She then announced that after 30 years of service, Vivian Hara, who was previously an SDAG in the San Francisco office, has retired. Ms. Castro stated it was very difficult to lose two really qualified folks. She announced that she had two new DAGs, Brian Bill and Nicholas Schultz who joined their Los Angeles office.

Dr. GnanaDev stated that he is anxious to see the pending case numbers go down.

Ms. Castro stated she felt with the three newest important initiatives of data sharing, efficiencies in the case disposition process, and other efficiencies in the Complaint Investigation Office, this will occur.

**Agenda Item 23      Discussion and Possible Action on Proposed Regulations on Citable Offenses, Citation Disclosure, and Citation and Fine Authority for Allied Health Professionals, amending Title 16, Division 13, CCR section 1364.10, 1364.11, 1364.13, and 1364.15**

Ms. Webb stated Board staff is looking to amend the citation and fine regulations in several ways. The first would be to add licensed midwives and polysomnographic technologists, technicians and trainees as individuals that Board staff can cite and fine. She stated staff would like to also add certain code sections to the regulations where if the licensee or registrant violates them, they could be cited and fined.

Ms. Webb noted that under CCR section 1364.13, staff would like to add licensed midwives along with the polysomnographic positions to address unlicensed practice situations. Also under CCR section 1364.15, she stated that because of a change in statute, any citations are kept on the website for three years, rather than five years, so the regulations need to be amended to reflect that statutory change. Ms. Webb then noted she had one suggestion for a change to section 1364.11, that would also apply to 1364.13. At the end of the section it currently reads “the sanction authorized under this section shall be separate from, and in addition to, any other civil or criminal remedies...”, she suggested changing it to read, “the sanction authorized under this section shall be separate from, and in addition to any other administrative, civil or criminal remedies...”

*Dr. GnanaDev made a motion to authorize staff to move forward with the rulemaking process to notice the language with the suggested amendments or public comment and to set the matter for hearing at a future Board meeting; s/Dr. Krauss. Motion carried unanimously.*

**Agenda Item 24      Discussion and Possible Action on Proposed Regulations on Requirements for Physicians on Probation, amending Title 16, Division 13, CCR section 1358**

Ms. Webb stated this is a regulation that had outdated language in it and staff recommended an amendment be made by striking the word “division” and replacing it with the word “Board” and also by correcting the title of the Board’s probation unit. The regulation currently states the title as the “Probation Surveillance Compliance Program,” and its title is the “Probation Program.” She noted the Board no longer has the “investigative personnel” that is currently referenced. She stated the current regulation has it referenced as “the probationer needs to be compliant with biological fluid testing” yet another reminder should be added that they are expected to be compliant with each term and condition in the order placing the physician on probation.

*Dr. Lewis made a motion to authorize staff to move forward with the rulemaking process, to notice the language for public comment and to set the matter for hearing at a future Board meeting; s/Dr. GnanaDev. Motion carried unanimously.*

**Agenda Item 25      Agenda Items for the July 2016 Meeting in the San Francisco Area**

Mr. Serrano Sewell stated there should be an End of Life Option Act (ELOA) presentation, the regulatory hearings, elections of officers, and an update on the ISO project.

Dr. GnanaDev requested that Board staff start looking into Board collaboration with the Nursing Board, the Medical Board and the Pharmacy Board. He felt that a lot could get accomplished if all the boards worked together more often.

Dr. Krauss stated that at the FSMB meeting, they adopted two policies with respect to marijuana and he requested these two policies be discussed at the next Board meeting.

Dr. Krauss also suggested that in light of having new Board Members, he would like to have an informational report on what is involved in oversight and verification of the terms of probation.

Ms. Wright suggested an update on the demographic study.

Dr. Levine suggested having a narrative of the changes to the VE and what the outcome of those changes/improvements will be.

Dr. Bholat requested a presentation on the training in medical schools/residencies regarding ethical conduct.

Ms. Choong, CMA, stated, pursuant to Government Code Section 11425.60 and procedures that the Board has adopted, they are suggesting that the Board consider and designate a certain decision as precedential. The decision in the Gary Igor Reyzin case dated March 22, 2015, be designated as precedential, as it contains significant legal and policy determinations of general applications that are likely to recur. She stated a written request would be provided to the Board to explain the reasons why they feel the decision should be designated as precedential.

Mr. Serrano Sewell thanked the Members for being there and the audience for attending, and also thanked Board staff for their work.

## **Agenda Item 26      Adjournment**

Mr. Serrano Sewell adjourned the meeting at 12:35 PM.

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Mr. Serrano Sewell, President

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Date

Denise Pines, Secretary

Date

\_\_\_\_\_  
Kimberly Kirchmeyer, Executive Director

\_\_\_\_\_  
Date

The full meeting can be viewed at <http://www.mbc.ca.gov/AboutUs/Meetings/2015/>